IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 736 OF 2005

IN

WRIT PETITION NO. 443 OF 2004

M/S. SOCIEDADE DE FOMENTO INDUSTRIES LTD., ...Applicant

Versus

STATE OF GOA THROUGH ITS CHIEF SECRETARY & 14 ORS. ....Respondent

Mr. Sudesh Usgaonkar, Advocate for the applicant.

Mr. S. N. Joshi, Advocate for the original petitioners.

Mr. S. S. Kantak, Advocate General with Ms. R. Chodankar, Additional Government Advocate for the respondents No.1 to 4.

Mr. C. A. Fereira, Asst. Solicitor General for the respondents No.6 and 7.

Mr. S. D. Lotlikar, Senior Advocate with Ms. S. Naik, Advocate for the respondent No.9.

Mr. J. Godinho, Advocate for the respondent No.12.

Mr. Sudin Usgaonkar, Advocate for the respondent No.13.

Coram:- D. D. SINHA &
N. A. BRITTO, JJ.

Date:- 14th November, 2005

P.C.

Miscellaneous Civil Application No.736/2005 is moved by the original respondent No.10 in Writ Petition No. 443/2004. By the present miscellaneous civil application, the petitioner seeks to recall the order dated 7th June, 2005 to the extent the respondent No.10 was directed to be impleaded as party respondent again in Writ Petition No.443/2004. Mr.

Sudesh Usgaonkar, the learned Counsel for the applicant (original respondent No.10) contended that the present applicant was impleaded as respondent No.10 in Writ Petition 443/2004. However, since the respondent No.10 was not the necessary party in the said writ petition, this Court vide Order dated 17/03/2005 deleted the present applicant (original respondent No.10) from the array of Writ Petition No.443/2004. It is contended that the petitioner-Village Panchayat of Surla and others in Writ Petition No.443/2004 again moved an application for amendment of the petition wherein the prayer is made to once again to implead the present applicant (original respondent No.10) as party respondent in Writ Petition NO.443/04.

This Court, vide Order dated 7th June, 2005, allowed the application and, therefore, the present applicant has moved the Miscellaneous Civil Application for recalling the order dated 7th June, 2005 to the extent mentioned hereinabove, on the ground that the only course open for the petitioner was to move the review application. However, till this date, the petitioner has not moved any application for review of the order dated 7th June, 2005 and in the absence thereof, the Order dated 7th June, 2005 may be recalled to the extent mentioned hereinabove.

The learned Counsel for the petitioner in Writ Petition No.443/2004 though does not dispute the factual aspect of the matter, however, stated that the present applicant (original respondent No.10) is a necessary party and, therefore, the application was moved for amendment which was allowed by this Court vide Order dated 7th June, 2005. The learned Counsel contended that if this Court is inclined to grant the prayer made in the Miscellaneous Civil Application, then the petitioner may be permitted to file a review application to review the order dated 17th March, 2005.

We have considered the contentions canvassed by the respective counsel for the parties. In the backdrop of the above referred facts, vide

order dated 17/03/2005 this Court had permitted to delete the present applicants (original respondent No.10 in Writ Petition No.443/2004). If that is so, then the only course open to the petitioner, if the petitioner wanted again to implead the respondent No.10 is by filing a review application in respect of the order dated 17th March, 2005. However, in the instant case, the procedure adopted by the petitioner, in our view, is not proper and, therefore, the Miscellaneous Civil Application No.736/2005 is allowed in terms of prayer clause with liberty to the petitioner to file a review application as prayed. With these observations, the miscellaneous civil application is disposed of.

D. D. SINHA, J.

N. A. BRITTO, J.

ssm.